IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 35/2005
(Ashok Kumar Vs. Kailash Chandra)

Date of Order : 18/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Vineet Jain for the petitioner.
Mr. D.K.Sharma for the non-petitioner.

BY THE COURT:-

Heard learned counsel for the parties.

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has assailed the order dated 08.11.2004 passed by Judicial Magistrate No.2, Bhilwara (for short 'the trial court' hereinafter) in Criminal Case No. 461/2004 whereby the trial court dismissed the application filed by the petitioner under Section 315 Cr.P.C.

By the application under Section 315 Cr.P.C., the accused-petitioner wanted to appear as witness and make a statement on affidavit.

Learned counsel for the petitioner submits that the petitioner will appear in person and make a statement as also

make available himself for cross-examination to the other side.

Sub-Section (1) of Section 315 Cr.P.C. provides that any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may given evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial provided that he shall not be called as a witness except on his own request in writing.

Since in the instant case, the petitioner himself has made a request in writing and therefore, in my view the order impugned deserves to be modified to the extent that instead of the petitioner making statement on affidavit, the petitioner himself to appear before the trial court and make a statement under Section 315 Cr.P.C.

Consequently, the trial court is directed to record the statement of the petitioner under Section 315 Cr.P.C., if the petitioner himself appears before the trial court and make a statement on the next date and also that the petitioner shall make himself available for cross-examination.

The petition is accordingly disposed of. The record of the trial court be returned forthwith. Stay petition also stands disposed of.

(H.R.PANWAR),J.

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